

Message

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**From:** McGill, Thomas [McGill.Thomas@epa.gov]  
**Sent:** 12/22/2020 4:40:05 PM  
**To:** Creswell, Michael [Creswell.Michael@epa.gov]; Armor, Suzanne [Armor.Suzanne@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Nagrani, Kavita [Nagrani.Kavita@epa.gov]  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

I'm also not aware of this being highlighted with the Miccosukee, and we can follow-up with the Corps to see the extent to which they have shared it.

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**From:** Creswell, Michael <Creswell.Michael@epa.gov>  
**Sent:** Tuesday, December 22, 2020 9:13 AM  
**To:** Armor, Suzanne <Armor.Suzanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

I do not think that it was highlighted with the Miccosukee. I have not seen it forwarded to them.

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**From:** Armor, Suzanne <Armor.Suzanne@epa.gov>  
**Sent:** Tuesday, December 22, 2020 9:08 AM  
**To:** Hicks, Matt <Hicks.Matthew@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

ATTORNEY-CLIENT COMMUNICATION  
DELIBERATIVE  
DO NOT RELEASE

Hi, everyone –

## Ex. 5 Deliberative Process (DP)

Thanks,  
Suzanne



SUZANNE K. ARMOR  
Regional Tribal Attorney  
National Indian Law Workgroup Co-Chair  
United States Environmental Protection Agency  
Office of Regional Counsel

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She/Her/Hers

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**From:** Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>  
**Sent:** Thursday, December 17, 2020 9:38 AM  
**To:** Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; McGill, Thomas <[Mcgill.Thomas@epa.gov](mailto:Mcgill.Thomas@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>; Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Ghosh, Mita <[Ghosh.Mita@epa.gov](mailto:Ghosh.Mita@epa.gov)>; Armor, Suzanne <[Armor.Suzanne@epa.gov](mailto:Armor.Suzanne@epa.gov)>; Nagrani, Kavita <[Nagrani.Kavita@epa.gov](mailto:Nagrani.Kavita@epa.gov)>; Creswell, Michael <[Creswell.Michael@epa.gov](mailto:Creswell.Michael@epa.gov)>  
**Subject:** FW: Seminole Tribe of Florida Request for Consultation - 404 Assumption

See Stephanie's response to the Seminole's counsel.

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**From:** Gray, Stephanie A <[Stephanie.A.Gray@FloridaDEP.gov](mailto:Stephanie.A.Gray@FloridaDEP.gov)>  
**Sent:** Thursday, December 17, 2020 9:29 AM  
**To:** Michelle Diffenderfer <[mdiffenderfer@llw-law.com](mailto:mdiffenderfer@llw-law.com)>; Joshua Holmes <[Joshua.R.Holmes@usace.army.mil](mailto:Joshua.R.Holmes@usace.army.mil)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>  
**Cc:** Rachael Santana <[rsantana@llw-law.com](mailto:rsantana@llw-law.com)>; Wolfe, Justin G. <[Justin.G.Wolfe@dep.state.fl.us](mailto:Justin.G.Wolfe@dep.state.fl.us)>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

Michelle,

Thank you for sending us a copy of your letter, and for your recognition that we have engaged with the Seminole Tribe of Florida (and others) for the past three years in the development of the proposed State 404 Program.

As I'm sure you're aware, the USACE Retained Waters List GIS Layer map is available on our website at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/404-assumption>, along with the following information:

This [mapping tool](#) is a draft depiction of the approximate extent of Retained Waters, along with a 300 foot guideline, as well as Indian Country, as defined by the Memorandum of Agreement between DEP and the U.S. Army Corps of Engineers (Corps). The map contains a screening widget which allows users to draw shapes or upload shapefiles that represent dredge/fill footprints in order to determine if 404 permitting jurisdiction for a project will be retained by the Corps (footprints fully or partially within Retained Waters and/or Indian Country) or assumed by the State (footprints entirely outside of Retained Waters and Indian Country). The Retained Waters layer was created by combining four datasets to represent waters named on the Retained Waters List and shorelines of waters subject to the ebb and flow of the tide (more information in the layer's metadata). The Indian Country layer was obtained from the Bureau of Indian Affairs' American Indian and Alaska Native Land Area Representation map. Both layers are subject to change if new information becomes available. These layers are not guaranteed to be accurate and are solely meant to assist the initial screening of an application. After approval of Florida's program, the final determination of 404 permitting jurisdiction can only be made by comparing actual observations of the site to the text of the MOA (e.g. measurement of ordinary high water mark or mean high tide line for Retained Waters, status and boundaries of the property for Indian Country). This screening tool is considered draft until EPA's approval of Florida's program.

The mapping tool link went live on November 20, 2020, and is a visual depiction of the Retained Waters List that was provided in both our Notice of Rule Development, published on February 19, 2020, and in the submission of our formal

package to EPA on August 20, 2020, as required by 40 C.F.R. 233.11(h). DEP staff provided training on using the tool at the public webinar on December 14, 2020, in which members of your firm were in attendance.

We look forward to our continued engagement with the Seminole Tribe of Florida in the implementation of our State 404 Program should EPA approve it.

Sincerely,



**Stephanie Gray**

Florida Department of Environmental Protection  
Office of the General Counsel  
Assistant Deputy General Counsel  
[Stephanie.A.Gray@FloridaDEP.gov](mailto:Stephanie.A.Gray@FloridaDEP.gov)  
Office: 850-245-2277

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**From:** Michelle Diffenderfer <[mdiffenderfer@llw-law.com](mailto:mdiffenderfer@llw-law.com)>

**Sent:** Thursday, December 17, 2020 7:50 AM

**To:** Gray, Stephanie A <[Stephanie.A.Gray@FloridaDEP.gov](mailto:Stephanie.A.Gray@FloridaDEP.gov)>; Joshua Holmes <[joshua.R.Holmes@usace.army.mil](mailto:joshua.R.Holmes@usace.army.mil)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>

**Cc:** Rachael Santana <[rsantana@llw-law.com](mailto:rsantana@llw-law.com)>


**Subject:** FW: Seminole Tribe of Florida Request for Consultation - 404 Assumption

**Importance:** High

Stephanie, Matt and Josh, wanted you to be aware of this request.  
Michelle

**Michelle Diffenderfer** | President/Shareholder

West Palm Beach, Florida

(o) 561.640.0820 | (m)  Ex. 6 Personal Privacy (PP)



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LONGMAN  
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**From:** Michelle Diffenderfer

**Sent:** Thursday, December 17, 2020 7:41 AM

**To:** 'Wheeler.andrew@Epa.gov' <[Wheeler.andrew@Epa.gov](mailto:Wheeler.andrew@Epa.gov)>; 'scott.a.spellmon@usace.army.mil' <[scott.a.spellmon@usace.army.mil](mailto:scott.a.spellmon@usace.army.mil)>

**Cc:** 'Walker.mary@Epa.gov' <[Walker.mary@Epa.gov](mailto:Walker.mary@Epa.gov)>; Andrew Kelly (<[andrew.d.kelly@usace.army.mil](mailto:andrew.d.kelly@usace.army.mil)>  
<[andrew.d.kelly@usace.army.mil](mailto:andrew.d.kelly@usace.army.mil)>; Marcellus W. Osceola Jr. (<[marcellusosceola@semtribe.com](mailto:marcellusosceola@semtribe.com)>  
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<[paulbackhouse@semtribe.com](mailto:paulbackhouse@semtribe.com)>; Anne Mullins <[AnneMullins@semtribe.com](mailto:AnneMullins@semtribe.com)>; Kevin Cunniff  
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<[WhitneySapienza@semtribe.com](mailto:WhitneySapienza@semtribe.com)>; Stacy D. Myers (<[stacymyers@semtribe.com](mailto:stacymyers@semtribe.com)>  
<[stacymyers@semtribe.com](mailto:stacymyers@semtribe.com)>; Rachael Santana <[rsantana@llw-law.com](mailto:rsantana@llw-law.com)>; 'Patricia A. Power (<[ppower@bosepublicaffairs.com](mailto:ppower@bosepublicaffairs.com)>  
<[ppower@bosepublicaffairs.com](mailto:ppower@bosepublicaffairs.com)>; Stephen Walker <[swalker@llw-law.com](mailto:swalker@llw-law.com)>

**Subject:** Seminole Tribe of Florida Request for Consultation - 404 Assumption

**Importance:** High

Please find attached the Seminole Tribe of Florida's request for consultation regarding the Retained Waters List GIS Layer map being prepared for the State of Florida's assumption of the 404 Program. It is our understanding that this map delineates Indian Country and which waters will remain with the USACE for 404 permitting and which will be assumed by Florida. It is very important to the Seminole Tribe to receive this map and have consultation on same to ensure that all of the Tribe's lands and waters are correctly delineated.

Thank you on behalf of the Seminole Tribe of Florida for your consideration,  
Michelle Diffenderfer and Rachael Santana

**Michelle Diffenderfer** | President/Shareholder

West Palm Beach, Florida

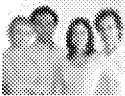
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